

REMARKS

In the Office Action mailed from the United States Patent and Trademark Office March 5, 2008, the Office objected to the abstract of the disclosure because it was below 50 words in length and was insufficiently descriptive in accordance with M.P.E.P. § 608.01(b). In addition, the Office rejected claims 1-4, 6-16, 18 and 19 under 35 U.S.C. § 102(a) as being anticipated by U.S. Pub. No. 2003/0123680 A1 to Lee et al. ("Lee"); and claims 5 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pub. No. 2003/0123680 A1 to Lee et al. ("Lee") in view of U.S. Pat. No. 5,755,671 to Albrecht et al. ("Albrecht").

Reconsideration of the application is respectfully requested in view of the above amendments to the abstract and the claims and in connection with the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

GENERAL CONSIDERATIONS

Applicant notes that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references.

Applicant also notes that the remarks presented herein have been made merely to clarify the claimed embodiments from elements purported by the Examiner to be taught by the cited references. Such remarks, or lack of remarks, are not intended to constitute, and should not be construed as, acquiescence on the part of the Applicant: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at

any time in this case. Applicant reserves the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

Consistent with the points set forth above, Applicant submits that neither the claim amendments set forth herein, nor any other claim amendments or statements advanced by the Applicants in this or any related case, constitute or should be construed as, an implicit or explicit surrender or disclaimer of claim scope with respect to the cited, or any other, references.

OBJECTIONS IN ACCORDANCE WITH M.P.E.P. § 608.01(b)

The abstract was objected to on the grounds that it was below 50 words in length and was insufficiently descriptive in accordance with M.P.E.P. 608.01(b). In response, Applicant submits the amended abstract. Accordingly, Applicant respectfully requests that the objection be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102 & § 103

Independent claims 1, 11 and 18 were rejected under 35 U.S.C. § 102(a) as being anticipated by Lee. M.P.E.P. § 2131 sets forth the standard for a rejection of a claim as anticipated under 35 U.S.C. § 102. "To anticipate a claim, the reference must teach every element of the claim." M.P.E.P. § 2131 states further,

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).... "The identical invention must be shown in as compete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant respectfully submits Lee does not teach every element of the claim set as provided herein. Accordingly, Applicant respectfully traverses this rejection.

In particular, Independent claims 1, 11 and 18 recite, “creating a temporal ambient noise map, said temporal ambient noise map comprising a plurality of average ambient noise values corresponding to a plurality of time values over a period of time....” Lee fails to teach this aspect of the claimed invention.

Generally, Lee fails to teach “creating a temporal ambient noise map, said temporal ambient noise map comprising a plurality of average ambient noise values corresponding to a plurality of time values over a period of time.” Rather, in direct contrast, Lee’s abstract provides that:

A noise sensor senses the external noise for a predetermined period of time and adjusts a volume level controller based on a predetermined volume set up table which lists volume levels corresponding to levels of the external noise.

Alternatively, the micro controller calculates an average noise level for a current predetermined period of time and adjusts the volume level controller based on comparing the current calculated average noise with a calculated average noise for a previous predetermined period of time.

Thus, Lee measures for a short period of time and creates an average and then broadcasts louder. The present claims are drawn to an invention, which creates a temporal ambient noise map and broadcasts louder than the predicted value in any given time slot.

Furthermore, Lee teaches an ongoing “return to operation” wherein a portable computer, which is often used in environments where the external noise is frequently changing, perpetually senses external noise and adjusts the volume level on a recurrent basis. (page 3, paragraphs

[0037] and [0038]; Figures 3 and 4; page 1, paragraph [0006]; see abstract). Accordingly, Lee teaches a cyclical discrete volume adjustment based on a discrete time period, but Lee fails to teach a temporal noise map comprising a plurality of recorded average ambient noise values which correspond to a plurality of recorded time values that relate to a continuous period of time. Consequently, Lee fails to teach or fairly suggest each of the claim limitations found in the presently presented claim set.

The Examiner has rejected claims 2-4 and 6-10, which each depend from claim 1, 12-16, which each depend from claim 11, and 19, which depends from claim 18, under 35 U.S.C. § 102(a) as being anticipated by Lee. By virtue of their dependence from claims 1, 11 and 18, respectively, claims 2-4, 6-10, 12-16 and 19 require, among other things, “creating a temporal ambient noise map, said temporal ambient noise map comprising a plurality of average ambient noise values corresponding to a plurality of time values over a period of time.” However, the Examiner has not established the Lee teaches this limitation in combination with the other limitations of claims 2-4, 6-10, 12-16 and 19. Thus Lee fails to include every element of the rejected claims. Applicant thus respectfully requests that the rejection of dependent claims 2-4, 6-10, 12-16 and 19 be withdrawn.

The Examiner has rejected claim 5, which depends from claim 1, and claim 17, which depends from claim 11, under 35 U.S.C. § 103(a) as being unpatentable over Lee in view of Albrecht. By virtue of their dependence from claims 1 and 11, respectively, claims 5 and 17 require, among other things, “creating a temporal ambient noise map, said temporal ambient noise map comprising a plurality of average ambient noise values corresponding to a plurality of time values over a period of time.” However, the Examiner has not established that Lee or Albrecht, either alone or in combination with each other, teach or suggest this limitation in

combination with the other limitations of claims 5 and 17. Thus, even if the purported teachings of Lee are combined with Albrecht in the allegedly obvious fashion advanced by the Examiner, the resulting combination nonetheless fails to include every element of the rejected claims. Applicant thus respectfully requests that the rejection of dependent claims 5 and 17 be withdrawn.

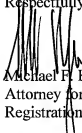
For at least this reason, Applicant respectfully submits that the prior art references do not, independently or in combination, explicitly or impliedly teach every aspect of the invention as claimed in the independent base claims. In addition, the dependent claims place further limitations on otherwise allowable subject matter. Accordingly, Applicant respectfully submits that the cited art does not teach every aspect of the claims as provided herein and therefore neither anticipates nor renders obvious the claims as provided herein.

CONCLUSION

Applicant submits that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicant requests favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

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Respectfully submitted,



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